Claim 37. (New) A substantially pure nucleic acid comprising a nucleotide sequence which hybridizes under stringent conditions to the nucleic acid of SEQ ID No: 13.

Claim 38. (New) The nucleic acid of claim 37, which nucleic acid encodes a *CAK1* polypeptide at least 75% homologous to an amino acid sequence represented in SEQ ID No. 14.

Claim 39. (New) The nucleic acid of claim 37, which nucleic acid encodes a polypeptide with an intrinsic kinase activity.

Claim 40. (New) The nucleic acid of claim 37, which nucleic acid encodes a polypeptide which functions in one of either role of an agonist or an antagonist of cell cycle regulation of a *Candida* cell.

REMARKS

Applicants respectfully request entry of this amendment prior to examination of this case on the merits. No new matter is introduced by new claims 37 and 38.

RESTRICTION REQUIREMENT

In the restriction requirement under 35 U.S.C. § 121, the Examiner alleges that there are ten distinct inventions as follows:

I. Claims 1-6 and 8-13, drawn to a Candida polypeptide, classified in Class 435, subclass 196; a fusion polyptide (435/195+); and an immunogen (424/184.1).

II. Claim 7, drawn to an antibody, classified in Class 530, subclass 387.1.

III. Claims 14-22 are drawn to a nucleic acid, classified in Class 536, subclass 23.74; expression vector (435/320.1); a host cell (435/252.3 or 935/66); and a method of producing a recombinant protein (435/69.1).

IV. Claims 22-24 are drawn to a probe/primer for identifying nucleic acids, classified in Class 536, subclass 24.32 and subclass 24.33.

V. Claim 25 is drawn to a diagnostic test kit, classified in Class 435, subclass 6.

VI. Claims 26-31 are drawn to a method of identifying a compound which is an inhibitor, Classified in Class 435, subclass 7.71.

VII. Claim 32 is drawn to an assay for screening test agents for an inhibitor of interaction, classified in Class 435, subclass 7.8.

VIII. Claim 33 is drawn to an assay for screening test agents for an inhibitor of interaction, classified in Class 435, subclass 7.72.

IX. Claims 34-35 are drawn to an assay for identifying an inhibitor, classified in Class 435, subclass 7.31.

X. Claim 36 is drawn to a Schizosaccharomyces cell, classified in Class 435, subclass 254.21.

These inventions are purported to be distinct for the reasons set forth in the office action. Applicants respectfully traverse this restriction, particularly with respect to the invention of Group III.

> The Examiner's attention is directed to M.P.E.P. § 803, which states that:
> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus, for a restriction requirement to be valid, the Examiner must establish the following two criteria:

(1) the existence of independent and distinct inventions (35 U.S.C. § 121); and

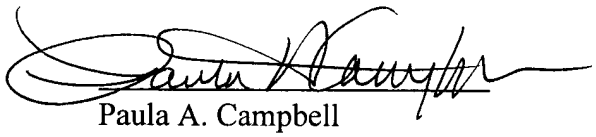
(2) that the search and examination of the entire application cannot be made without serious burden (M.P.E.P. § 803).

Applicants respectfully submit that the Examiner has not set forth a convincing argument that the search and examination of group III, drawn to isolated nucleic acids encoding CAK kinases and group IV, drawn to nucleic acid probes and primers, necessarily represents an undue burden for the examiner. It is Applicant's position that extending the search to include the three additional nucleic acid claims (claims 22, 23 and 24) of group IV would not present a serious burden on the Examiner's search of the nucleic acid claims of group III. Therefore, the restriction requirement is in error and the Examiner has not shown that a serious burden would be required to examine the claims of Groups III and IV.

If there are any other fees due in connection with the filing of this response, please charge the fees to our **Deposit Account No. 06-1448**.

Respectfully submitted,
FOLEY, HOAG, & ELIOT

August 24, 1999



Paula A. Campbell
Registration No. 32,503
Attorney for Applicants

Patent Group
Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109-2170
Tel.: (617) 832-1000
Fax: (617) 832-7000